

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
)	

**REPLY COMMENTS OF
INTERNATIONAL BUSINESS MACHINES CORPORATION**

Christopher G. Caine
Vice President
Governmental Programs

IBM
1301 K Street, N.W.
Suite 1200 West
Washington, D.C. 20005
(202) 515-5800

Counsel:

Richard E. Wiley
R. Michael Senkowski
Peter D. Shields
Amy E. Worlton

Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

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INTRODUCTION & SUMMARY

International Business Machines Corporation (“IBM”) hereby submits its reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Third Report and Order and Second Further Notice of Proposed Rulemaking* (“FNPRM”).¹ As set forth in IBM’s initial comments, IBM supports the Commission’s initiative in this proceeding to strengthen the Schools and Libraries Universal Service Support Mechanism (“E-Rate program”). IBM submits these reply comments to continue to urge the Commission to implement clear, simple, and stable E-Rate rules that will create an efficient schools and libraries support program.

I. IBM SUPPORTS A SIMPLIFIED FORM 470 PROCESS TO PROVIDE NATIONAL NOTICE TO POTENTIAL BIDDERS.

Many commenters in this proceeding urged the Commission to recognize that the current Form 470 process places an undue burden on E-Rate applicants,² some calling for the

¹ *In the Matter of Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 69 Fed. Reg. 6229 (Feb. 10, 2004)(“FNPRM”).

² *See, e.g.*, Comments of the American Association of School Administrators & Association of Educational Service Agencies at 4; Comments of E-Rate Central at 4; Comments

elimination of the Form 470. As commenters have noted, notwithstanding the Form 470 process, schools and libraries must comply with state and local procurement laws, which establish a competitive bidding mechanism independent of the Form 470.³ Through IBM's participation in the E-Rate program, we are aware of the burden schools bear following the complex and sometimes unclear rules concerning the Form 470. In addition, Form 470 filings often duplicate filings from previous funding years and overlap with schools' efforts to comply with state and local rules. Yet, we believe that the Form serves the useful purpose of providing national notice of E-Rate bidding opportunities, thereby promoting competition.

Therefore, IBM supports: (a) simplifying the Form 470 into a brief notice that the school or library is seeking bids on an E-Rate project; (b) clarifying that the Form is a notice – not a procurement document; and (c) requiring schools' compliance only with state and local procurement rules. To the extent that the Commission finds additional competitive bidding requirements are necessary beyond those established by state and local law, the agency should clarify these principles so E-Rate applicants clearly understand their obligations. These actions will greatly reduce the burden on school districts.

Because the Form 470 is an important way for service providers to obtain national notice of E-Rate projects, IBM disfavors eliminating the Form 470 altogether. Although state and local procurement law provides for a competitive bidding process, under such law, service providers outside the school's state or locality may have no reliable means for learning of a school's

of the Council of the Great City Schools at 5; Comments of the New York City Department of Education at 3; Initial Comments of the Ohio SchoolNet Commission at 4; On-Tech Comments on Second Notice of Proposed Rulemaking at 6; Comments of the Pennsylvania Department of Education at 4-5 (all filed March 11, 2004); Comments of the Wisconsin Department of Public Instruction at 2 (filed March 10, 2004).

³ See, e.g., Comments of the Council of the Great City Schools at 5; Initial Comments of the Illinois State Board of Education at 8 (filed on March 11, 2004).

interest in E-Rate services. State and local requirements to post a solicitation of bids on a website or advertise in a newspaper do not amount to a national notice mechanism like Forms 470 posted on the SLD website. This national notice stimulates competition among service providers and should not be eliminated.

If the Commission nevertheless decides to eliminate the Form 470, IBM urges the agency to provide some form of national notice to potential E-rate bidders. At a minimum, the FCC should require E-Rate applicants to provide the information requested in Items 8-10 on the current Form 470, which includes a brief description of E-Rate goods and services sought and an indication whether the applicant will release a Request for Proposals. Information about whether the school's procurement will be based on a state contract and how to contact the school for more information would also be helpful. In addition, the FCC should consider creating a central registry of schools and libraries for vendor contact purposes. Finally, the Commission should clarify that a school's disclosures through a national notice mechanism are for notice purposes only and are not part of the formal procurement process.

II. CHANGES TO THE DISCOUNT MATRIX, IF NECESSARY, SHOULD ACCOUNT FOR THE TWO-YEAR LIMIT ON FUNDING INTERNAL CONNECTIONS AND ALLOW FOR AN ORDERLY TRANSITION TO NEW DISCOUNT LEVELS.

Many commenters urged the FCC to refrain from changing the discount matrix until the agency determines the effectiveness of the new limitation on funding internal connections, which precludes funding in more than two of every five years.⁴ IBM urges the Commission to

⁴ See, e.g., Comments of the American Library Association at 17; Comments of the Consortium for School Networking and International Society for Technology in Education at 5 (filed March 9, 2004); Comments of Education and Libraries Networks Coalition at 2; Comments of the Council of the Great City Schools at 4; Comments of the National Association of State Utility Consumer Advocates at 1-2; Comments of the New York City Department of Education at 2 (all filed March 11, 2004, except as noted).

recognize that this internal connections funding limitation serves the same policy goals as a reduction in the discount matrix would. First, as IBM discussed in its comment, the funding limitation already will help spread funding more widely among eligible schools and libraries. Further, the limit encourages schools to deploy internal connections more efficiently. Accordingly, significant cuts in discount levels may not be necessary to achieve the Commission's objectives. IBM agrees with other commenters that the FCC should gauge the effectiveness of the two-year funding limitation before implementing additional changes designed to accomplish the same policy goals.

Nonetheless, if the Commission determines that reducing discount rates is the best policy, it should consider eliminating the rule limiting internal connections funding to two of every five years. Both reducing the discount matrix and limiting funding over five years would be too onerous on schools that depend on the E-Rate program to obtain basic infrastructure.

In addition, if the Commission determines that reducing discount rates is the best policy, IBM again encourages the Commission not to cut discount rates significantly. As many commenters noted, without a heavy discount, many schools and libraries in disadvantaged areas cannot afford basic infrastructure and Internet connectivity.⁵

Further, to the extent that the Commission reduces the discount matrix at all, the FCC should reduce discount rates for Priority 1 and Priority 2 services consistently in order to avoid setting up incentives for schools and libraries to favor one kind of service over another, regardless of their technology and educational needs. IBM agrees with E-Rate Central's comment that reducing the discount rate for all eligible services "would provide consistency (and

⁵ See, e.g., Comments of the American Library Association at 13; Comments of the Consortium for School Networking and International Society for Technology in Education at 3; Comments of United Utilities, Inc. at 2-3 (filed on March 11, 2004).

simplicity) throughout the discount matrix, and would avoid creating additional incentives to try to push Priority Two services into Priority One.”⁶

Finally, IBM again urges the Commission, should it decide to make any changes, to provide for an orderly transition to new support levels. It is important that the Commission determine an appropriate policy, give schools sufficient notice of changes, and thereafter, avoid repeated and disruptive changes to the matrix. Schools will be better able to absorb changes, such as reductions to the discount matrix, if they occur gradually in a pre-determined downward “glide path,” rather than in a dramatic “flash-cut.”

III. THE COMMISSION SHOULD REQUIRE E-RATE APPLICANTS TO DISCLOSE THE IDENTITY OF CONSULTANTS.

The majority of commenters, including IBM, favored a requirement that E-Rate applicants identify the consultants to their technology plans.⁷ Requiring consultant identification will promote the integrity of the E-Rate program and help deter waste, fraud and abuse. In addition, most commenters agreed that consultants should disclose any conflicts of interest, such as relationships with E-Rate service providers or manufacturers of E-Rate eligible goods.⁸ Competition for E-Rate services may be impaired if service providers are disadvantaged because

⁶ Comments of E-Rate Central at 3.

⁷ See, e.g., Comments of the Arkansas E-Rate Work Group at 5; Comments of BellSouth Corporation at 10; Comments of Consortium for School Networking and International Society for Technology in Education at 10; Comments of the Council of the Great City Schools at 8; Comments of Education and Libraries Networks Coalition at 10; Comments of E-Rate Complete, LLC at 6; Comments of Funds for Learning, LLC at 17; Comments of Kellogg & Sovereign Consulting, LLC at 15; Comments of On-Tech at 17; Comments of WiscNet at 6 (all filed March 11, 2004, except as noted above).

⁸ See, e.g., Comments of BellSouth at 10; Comments of Consortium for School Networking and International Society for Technology in Education at 10; Comments of Education and Libraries Networks Coalition at 10; Comments of WiscNet at 6.

one competitor has a relationship with the school's E-Rate consultant. By requiring consultants to disclose these conflicts of interest, the Commission can help avoid this type of disadvantage.

As the Commission considers adopting new rules concerning E-Rate consultants, IBM urges the agency to ensure that these rules will not deter applicants from engaging needed outside assistance. Only the largest schools and libraries can afford to employ a technology coordinator, and even so, these coordinators appreciate consultants because their in-house resources are occupied with day-to-day management of technology for classrooms and libraries. In-house staff frequently lack the time and expertise necessary to track products and services and develop their technology plans independently. Accordingly, many applicants rely on outside consultants to help plan and implement technology for the library or classroom.

IV. THE COMMISSION SHOULD NOT EXPAND THE DEFINITION OF INTERNET ACCESS.

IBM notes that there is a split among commenters on whether the Commission should expand the definition of Internet Access in order to fund more advanced Internet-based services such as the provision of content. While IBM might appreciate the opportunity to market and sell Internet Access services within the E-Rate program, on the whole, IBM does not support the expansion of the definition of Internet Access. The purpose of the E-Rate program is to help schools and libraries obtain *basic* services and infrastructure by distributing universal service dollars widely. Expansion of the Internet Access definition is not consistent with this purpose. New services that would be available under the expanded definition, such as content, are not a part of the basic package of Internet Access services. Thus, by funding content, fewer dollars will be available to provide basic access and internal connections to schools and libraries as a whole. Further, by expanding the definition of Internet access to include some content, the

Commission would make it more difficult to determine the eligibility of particular Internet access services, thereby increasing uncertainty and raising a multitude of eligibility questions.

V. TO ENSURE DUE PROCESS, ANY EXPANDED FUNDS RECOVERY SHOULD INCLUDE OPPORTUNITY FOR AN ADMINISTRATIVE HEARING.

IBM again wishes to stress to the Commission the importance of an opportunity for applicants and service providers to receive a full administrative hearing before a funds recovery order would issue. As SBC Communications Inc. noted, the Commission should implement procedures that will “provide parties notice and an opportunity to contest the recovery of funds, and ensure that innocent parties are made whole.”⁹ IBM also supports the views of other commenters that any funds recovery rules should: (a) include a statute of limitations;¹⁰ (b) call for recovery from the party in error or at fault, rather than seeking funds by default from the service provider;¹¹ (c) include an exception for errors that would result in *de minimis* recovery;¹² and (d) forgive technical violations.¹³

VI. THE COMMISSION SHOULD EXPEDITE ITS REVIEW OF APPLICATIONS AND APPEALS.

IBM again urges the Commission and SLD to work to reduce the time necessary to review an application for funding or an appeal from a denial of funding. As noted by the

⁹ See Comments of SBC Communications Inc. at 2 (filed March 11, 2004).

¹⁰ See, e.g., Comments of BellSouth at 6; Comments of Consortium for School Networking and International Society for Technology in Education at 8; Comments of Cox Communications, Inc. at 10; Comments of Education and Libraries Networks Coalition at 8; Comments of Verizon at 9 (all filed March 11, 2004, except as noted above).

¹¹ See, e.g., Comments of Cox Communications, Inc. at 9; Comments of General Communications Inc. at 5-7; Comments of Qwest Communications International, Inc. at 10; Comments of SBC Communications Inc. at 1 (all filed March 11, 2004).

¹² See, e.g., Comments of BellSouth at 6; Comments of Consortium for School Networking and International Society for Technology in Education at 7; Comments of Sprint at 9 (filed March 11, 2004).

¹³ See, e.g., Comments of Verizon at 2.

Pennsylvania Department of Education, a delay effectively means a denial if funding is not provided before the end of the funding year.¹⁴ IBM agrees that a delay in the review of an application or an appeal, regardless of the Commission's ultimate decision, can harm an applicant and serve as an effective denial. IBM reiterates that the Commission should work with SLD to determine what administrative steps may be taken to expedite the funding review process while maintaining the integrity of the program.

VII. THE COMMISSION SHOULD AVOID BRIGHT-LINE TESTS.

A number of commenters agree with IBM's position that establishing bright-line tests for cost-effective service is not advisable, as it would overlook the tremendous variation that exists in educational markets.¹⁵ For example, in IBM's experience, the cost of providing internal connections is higher on average for schools that have no pre-existing technology infrastructure versus schools with infrastructure on which later projects can build. Further, internal connections costs can be substantially higher for urban and rural school districts because their buildings generally are older. Even prosaic details – such as whether a building has drop ceilings and hollow walls to allow for easy cabling access – can make a significant difference to the bottom line. Also, urban districts tend to incur additional costs if their schools are multi-story buildings, which generally require more wiring closets and cabling, or a campus composed of many buildings, each of which must be connected via underground or aerial fiber. Rural districts

¹⁴ See Comments of the Pennsylvania Department of Education at 37 (filed March 11, 2004)(stating “[t]he current reality is that it takes a year or more for an appeal, from either the FCC or SLD, to be decided. For any applicant with priority 1 services that are contingent upon E-rate funding, this delay means that the FRN is effectually denied, regardless of the administrator or Commission’s ultimate decision, because the funding year for which the services were going to be used will have ended. Long delays also routinely result in the need for subsequent requests for service substitutions and SPIN changes, thus adding an additional 3-4 months to the original appeal process.”)

¹⁵ See, e.g., Comments of the American Library Association at 18; Comments of the Education and Libraries Networks Coalition at 6.

face added expenses due to the travel costs of trained installers and technicians. Because bright line tests might ignore these individual differences and force schools to adhere to a single, rigid model in order to receive funding, they ultimately could reduce the ability of schools to reach their technology objectives.

CONCLUSION

IBM continues to support the FCC's initiative to strengthen the E-Rate program. We urge the Commission in this process to ensure that E-Rate rules are simple, clear and stable and allow applicants flexibility in developing their technology plans. Along with other commenters, IBM suggests that the Commission refashion the Form 470 as a notice of E-Rate bidding opportunities and clarify that it is not a procurement document. In addition, the FCC should wait and see whether the two-year limit on internal connections funding will be effective before changing the discount matrix. IBM agrees with the majority of commenters that E-Rate applicants should disclose the identity of E-Rate consultants. Finally, schools and E-Rate service providers must receive due process and an opportunity to receive an administrative hearing before any funds recovery order issues.

Respectfully submitted,

/s/

Counsel:

Richard E. Wiley
R. Michael Senkowski
Peter D. Shields
Amy E. Worlton

Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
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Christopher G. Caine
Vice President
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